

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gary A. Deeter et al.
Title: MODIFIED ANIONICALLY
POLYMERIZED POLYMERS
Appl. No.: 10/710,654
Filing Date: 7/27/2004
Examiner: MULLIS, Jeffrey C.
Art Unit: 1796
Confirmation Number: 4653

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants are in receipt of the Notice of Allowance for the above-captioned application. Applicants disagree with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 93 days instead of 0 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 0 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8.

Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 93 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 392 days

(b) Total Applicant delay: 299 days

Final PTA Determination: 93 days

Applicants therefore respectfully request that the patent be accorded 93 days PTA.

The \$200.00 petition fee is being paid by credit card via EFS-web.

The patent is not subject to a terminal disclaimer.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16 1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date: December 23, 2008

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By



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Patent Term Adjustment Calculation System

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Docket Number: 018894-0113

Application Number: 10/710654

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	07/27/2004	0		
	14 month From Application date	09/27/2005	427		
Edit Delete	Restriction Requirement	10/26/2005	456	29	
Edit Delete	Restriction Requirement Response Received at PTO	11/22/2005	483		
Edit Delete	Non-Final Office Action	01/20/2006	542		
	Non-Final Office Action + 3 months	04/20/2006	632		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	07/20/2006	723		91
Edit Delete	Non-Final Office Action	10/03/2006	798		
	Non-Final Office Action + 3 months	01/03/2007	890		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/02/2007	948		58
Edit Delete	Non-Final Office Action	06/20/2007	1,058		
	3 Year Period Starts	07/27/2007	1,095		
	Non-Final Office Action + 3 months	09/20/2007	1,150		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	12/19/2007	1,240		90
Edit Delete	Final Office Action	02/25/2008	1,308		
	Final Office Action + 3 months	05/25/2008	1,398		
Edit Delete	Final Office Action Response Received at PTO	06/05/2008	1,409		
Edit Delete	Advisory Action	06/27/2008	1,431		
Edit Delete	Request For Continued Examination	07/24/2008	1,458		60
	3 Year Period Stopped	07/24/2008	1,458	363	
Edit Delete	Notice of Allowance	09/29/2008	1,525		
	Projected Patent Grant Date	04/07/2009	1,715		
			Totals:	392	299
			PTA:		93

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IP: 10.24.4.200

Foley & Lardner LLP